REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-047934

1.NOT REPORTABLE

2. NOT OF INTEREST TO OTHER JUDGES:

Date: 19 March 2026

Signature: Khaba AJ

In the matter between:

SA TAXI IMPACT FUND (RF) PTY LTD Applicant

And

SIPHO VILAKAZI

[Identity Number: 8[…]] Respondent

In re:

SA TAXI IMPACT FUND (RF) PTY LTD Plaintiff

And

SIPHO VILAKAZI
[Identity Number: 8[…]] Defendant

Neutral Citation: *SA taxi Impact Fund (RF) Pty Ltd v Sipho Vilakazi (047934-2025) [2026] ZAGPJHC ------ (19 March 2026)*
Coram: Khaba AJ
Heard: 12 February 2026.
Delivered: 19 March 2026 – This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to CaseLines and by release to SAFLII. The date for hand-down is deemed to be 19 March 2026.
Summary: Application for Summary Judgment – whether the requirements contained in Rule 32(1) and (2) of the Uniform Rules of Court have been satisfied – No facts pleaded to support bona fide defence – Application granted.

ORDER

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1. The application for summary judgment is granted.

2. The instalment sale agreement with agreement number: 125154:132643 is hereby cancelled.

3. The respondent is ordered to return the motor vehicle, being a 2023 Toyota Quantum/ Hiace 2.5 D-4D Sesfikile 16s with engine number: 2[…] and chassis number: A[…] *("the motor vehicle")* to the applicant forthwith.

4. The applicant's claim for payment contained in paragraph 10 of its particulars of claim is postponed, pending the return of the motor vehicle to the applicant and the determination of the value, the calculation of the amounts due to the applicant and judgment of that amount, together with interest and costs.

5. The applicant shall retain all the monies paid by the respondent to the applicant.

6. The respondent is ordered to pay the costs of this application on the scale as between attorney and client scale, including cost of counsel on scale C.

JUDGMENT

KHABA AJ:

Introduction:

[1] This is an application for summary judgment brought by the applicant (plaintiff in the main action) against the respondent (defendant) in terms of Rule 32(1)(b) and (c) of the Uniform Rules of Court. The applicant seeks an order cancelling the instalment sale agreement concluded between the parties, the return of the motor vehicle which forms the subject matter of that agreement, and the postponement of its monetary claim pending the return and realisation of the vehicle.

[2] The agreement incorporated standard terms and conditions, including that ownership of the vehicle would remain with the applicant until all amounts had been paid in full, and that in the event of breach, the applicant would be entitled to cancel the agreement, repossess the vehicle, and claim the shortfall after realisation of the vehicle.

[3] Having carefully considered the papers filed of record, and the heads of argument filed by both parties' representatives, and the applicable legal principles relied upon both counsels, I have come to the conclusion that summary judgment must be granted in favour of the applicant. What follows are the reasons for this conclusion.

The Factual Background:

[4] The facts giving rise to this application are largely undisputed, and where disputes exist, they are not such as to preclude the granting of summary judgment. They may be summarised as follows.

[5] On 24 November 2023, and at Midrand within this court's area of jurisdiction, the parties concluded a written instalment sale agreement. The agreement is governed by the provisions of the National Credit Act 34 of 2005 *("the NCA")*, the applicant being a registered credit provider with registration number NCRCP8156, as evidenced by the certificate annexed to the particulars of claim as annexure *"A".*

[6] In terms of the agreement, the applicant financed the respondent's acquisition of a 2023 Toyota Quantum/Hiace 2.5 D-4D Sesfikile 16s motor vehicle, bearing engine number 2[…] and chassis number A[…] *("the motor vehicle").* The purchase price, after deduction of a deposit of R25,000.00, resulted in a total deferred amount of R597,835.02, payable in 91 monthly instalments of R16,793.11, commencing on 1 January 2024. The interest rate was variable, linked to the prime overdraft rate, and stood at 23.75% at the time of conclusion of the agreement.

[7] The material terms of the agreement, as recorded in the particulars of claim and admitted by the respondent in his plea, include the following: ownership of the

motor vehicle would remain vested in the applicant until all amounts had been paid in full (clause 6.6); the respondent chose the address stipulated in paragraph 3 of the particulars of claim as his *domicilium citandi et executandi* (clause 6.7); and in the event of breach, the applicant would be entitled, after due demand, to terminate the agreement, obtain possession of the vehicle, dispose of it in accordance with the provisions of the NCA, and recover from the respondent any shortfall remaining after such sale (clause 6.8).

[8] The applicant performed its obligations in terms of the agreement. The motor vehicle was duly delivered to the respondent.

[9] The respondent, however, failed to honour his payment obligations. The respondent fell into arrears, and by 26 March 2025, the arrears stood at R193,211.69. This is evident from the statement of account annexed to the particulars of claim as annexure *"D".*

[10] On 19 July 2024, the applicant dispatched a notice in terms of section 129(1)(a) of the NCA to the respondent's *chosen domicilium address* by registered post. A copy of the notice and proof of postage are annexed to the particulars of claim as annexure *"E".* The SAPO track and trace report, annexed as annexure *"F",* confirms that the notice reached the Wadeville Post Office on 12 August 2024 and that a first notification was dispatched to the respondent.

[11] The respondent failed to respond to the notice. The respondent did not approach a debt counsellor, nor did he seek alternative dispute resolution. The respondent remained in default for a period exceeding twenty business days, and more than ten business days elapsed after delivery of the section 129 notice before the institution of these proceedings.

[12] On 07 April 2025, the applicant instituted action against the respondent. The respondent delivered a plea on 17 June 2025. In his plea, he admitted the

conclusion of the agreement and the material terms thereof. The respondent raised, however, two primary contentions: firstly, that he was making efforts to settle the arrears and had arranged funds for that purpose; and secondly, that his failure to pay was occasioned by the suspension of his transportation permit, which had since been reinstated.

[13] On 08 July 2025, the applicant launched this application for summary judgment. The application is supported by an affidavit deposed to by Mr. Mbuso Ivan Dube, the Legal operations manager of the applicant, who verifies the cause of action, confirms the respondent's breach, and avers that the respondent does not have a *bona fide* defence to the claim. Annexed to the affidavit is a resolution of the applicant's board of directors, marked *"MID1"*, authorising Mr. Dube to depose to the affidavit and to institute these proceedings on the applicant's behalf.

[14] The respondent delivered an answering affidavit on 17 June 2025 (notwithstanding that this post-dates the summary judgment application, it is treated as his opposition thereto). In his affidavit, the respondent repeated his earlier contentions and added that he had not received the section 129 notice. The respondent also alleged that he had made several attempts to engage with the applicant to arrange payment, but that the applicant had rebuffed his efforts.

[15] On 04 February 2026, the respondent filed a supplementary affidavit setting out additional factual material of a more extensive nature. The respondent alleged that he had purchased three vehicles financed by the applicant, that his operating permits were only issued in April 2025, that the applicant had opened a false fraud case against him which caused him to lose investor support, and that he had been unable to generate income as a result. The respondent further alleged that he had sold his late grandparents' property to raise funds, but that delays in the winding up of the estate had prevented the release of the funds. The respondent claimed to be a registered debt collector, security officer, and professional driver, and that the false fraud case threatened his ability to earn a

living. The respondent pleaded with the court to direct the applicant to recapitalise the arrears and allow him to resume payments.

The issues for Determination:

[16] The crisp issues for determination by this Court are:

[16.1] Whether the applicant has satisfied the requirements of Rule 32 of the Uniform Rules of Court and has complied with the procedural requirements under Rule 32(1) and (2);

[16.2] Whether the respondent has raised a *bona fide* defence that raises triable issues for trial; and

[16.3] The appropriate order as to costs.

[17] The applicant contends that the respondent has not raised any *bona fide* defence, that the defences sought to be raised are without merit, and that no triable issues exist. The application for summary judgment ought, therefore, to be granted as prayed in the notice of motion.

The Legal Framework:

[18] The summary judgment procedure is a valuable mechanism to prevent delay and abuse of process by defendants who have no real defence to a claim. It is not intended to deprive a defendant with a triable issue or a sustainable defence of his or her day in court. The purpose of the procedure was eloquently captured in *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA)*[1] the court held:

[1] Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture 2009 (5) SA 1 (SCA) at para 32.

"The rationale for summary judgment proceedings is impeccable. The procedure is not intended to deprive a defendant with a triable issue or a sustainable defence of her/his day in court. ... If the defendant's defence is not bona fide or if the notice of intention to defend has been delivered solely for the purpose of delay, the plaintiff should not be compelled to await a trial date. To do so would, in many instances, permit a defendant with no defence to exploit the delays inherent in litigation and, in the process, to cause the plaintiff unjustifiable and often irrecoverable commercial prejudice."

[19] In *Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A)*[2] *at 423A-C*, the Appellate Division (as it then was) held that a defendant seeking to resist summary judgment must:

"…disclose fully the nature and grounds of the defence and the material facts relied upon therefor... with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a bona fide defence. ... If the defence is averred in a manner which appears in all the circumstances to be needlessly bald, vague or sketchy, that will constitute material for the Court to consider in relation to the requirement of bona fides."

[20] *In Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T)*[3]**,** the court emphasised that a defendant must engage meaningfully with the plaintiff's claim and must not plead vague generalities or conclusory allegations that are not substantiated by solid facts. The defendant must set out facts which, if proved at trial, would constitute a complete defence to the claim.

[21] Where the plaintiff is a corporate entity, the deponent to the summary judgment affidavit may legitimately rely on records in the company's possession for personal knowledge of the relevant facts. In *Rees v Investec Bank Ltd [2014] ZASCA 91; 2014 (4) SA 220 (SCA)*[4], the Supreme Court of Appeal confirmed:

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[2] Maharaj v Barclays National Bank Ltd 1976 (1) SA 418 (A) at 423A-C at 423A-C.
[3] Breitenbach v Fiat SA (Edms) Bpk 1976 (2) SA 226 (T) at 228.
[4] Rees v Investec Bank Ltd [2014] ZASCA 91; 2014 (4) SA 220 (SCA) at para 16.

> "As stated in Maharaj, 'undue formalism in procedural matters is always to be eschewed' and must give way to commercial pragmatism. At the end of the day, whether or not to grant summary judgment is a fact-based enquiry. Many summary judgment applications are brought by financial institutions and large corporations. First-hand knowledge of every fact cannot and should not be required of the official who deposes to the affidavit on behalf of such financial institution."

[22] These principles guide the determination of the present application.

The Compliance with Rule 32:

[23] Rule 32(2) requires that an application for summary judgment be supported by an affidavit made by the plaintiff or by any other person who can swear positively to the facts verifying the cause of action and the amount claimed, and identifying any point of law relied upon. The affidavit must also briefly explain why the defence pleaded does not raise any genuine issue for trial.

[24] The applicant's deponent, Mr. Dube, is the Legal operations manager of the applicant. Mr. Dube states in his affidavit, that by virtue of his position, he has in his possession and under his direct control all the applicant's records, accounts, and other relevant documents pertaining to the respondent's account. He has acquired direct knowledge of the respondent's financial position and the status of his account. He verifies the cause of action as set out in the particulars of claim, the facts and allegations surrounding the cause of action, the documents relied upon, and the amount claimed.

[25] The respondent does not dispute the deponent's personal knowledge. The respondent does not challenge the delivery of the vehicle or the conclusion of the contract. The deponent's affidavit complies with the requirements of Rule 32(2). The applicant has, therefore, established a valid claim for summary judgment.

Whether the Respondent has raised a bona fide defence:

[26] The burden now shifts to the respondent to satisfy the court that he has a *bona fide* defence to the claim. He must disclose the nature and grounds of his defence and the material facts upon which it is based with sufficient particularity and completeness.

[27] The respondent's answering affidavit and supplementary affidavit raise several contentions. I shall deal with each in turn.

The alleged non-receipt of the section 129 notice:

[28] The respondent contends that he did not receive the notice in terms of section 129(1)(a) of the NCA. This contention must be evaluated against the undisputed evidence placed before the court by the applicant.

[29] The applicant dispatched the notice by registered post to the respondent's chosen *domicilium* address on 19 July 2024. The SAPO track and trace report, annexed to the particulars of claim as Annexure *"F",* confirms that the notice reached the Wadeville Post Office on 12 August 2024 and that a first notification was sent to the recipient. The notice was, therefore, delivered to the relevant post office, and the postal service issued a notification to the respondent.

[30] Section 129(5) of the NCA provides that the credit provider is considered to have satisfied its obligation to deliver the notice if it has delivered it to the postal service for delivery by registered mail to the consumer's address. Section 129(7) deems delivery to have occurred when the notice reaches the relevant post office or postal agency. The legislature has prescribed that written confirmation by the postal service of delivery to the relevant post office constitutes proof of delivery for the purposes of section 129(5).

[31] In *Williams v Shackleton Credit Management [2023] ZAWCHC 246*[5], the court held that the law does not require that the notice in fact come to the consumer's knowledge. What is required is that the credit provider establish that the notice was delivered by registered post to the post office that would send a delivery notice to the consumer. *The Constitutional Court in Sebola and Another v Standard Bank of South Africa Ltd and Another [2012] ZACC 11; 2012 (5) SA 142 (CC) and Kubyana v Standard Bank of South Africa Ltd [2014] ZACC 1; 2014 (3) SA 56 (CC)* established that proof of despatch together with a track and trace report creates a rebuttable presumption of delivery.

[32] The respondent has not provided any evidence to rebut this presumption. He merely states that he did not receive the notice. The respondent does not allege that the notification was not left at his address, that he was away, or that the post office failed to notify him. A bald denial, without more, is insufficient to displace the presumption of delivery.

[33] Moreover, the section 129 notice was annexed to the combined summons, which was served on the respondent personally. The respondent was, therefore, informed of his rights under section 129 at the latest upon service of the summons. He has not, to date, exercised any of those rights. He has not approached a debt counsellor, nor has he sought alternative dispute resolution. As the court held in *Firstrand Bank v Maseng and Others [2023] ZAGPPHC 799*, if non-compliance is cured between service of summons and the hearing, it would be pointless to postpone the proceedings. This defence is without merit and does not constitute a *bona fide* defence.

The suspension of the transportation permit:

[34] The respondent contends that his failure to pay was caused by the suspension of his transportation permit, which has since been reinstated. The second

[5] Williams v Shackleton Credit Management [2023] ZAWCHC 246 at para 38.

respondent argues that he is now in a position to generate income and address the arrears.

[35] This contention does not constitute a defence to the claim. The instalment sale agreement imposes an unconditional obligation on the respondent to make monthly payments. Clause 4.8 of the agreement expressly provides that payment of the instalments is still required even if the vehicle is damaged, defective, destroyed, or no longer of any use. The respondent's ability to generate income from the vehicle does not affect his obligation to pay.

[36] The suspension of the permit may explain why the arrears arose, but it does not excuse them. The law of contract does not generally excuse performance simply because it has become more difficult or less profitable. As the Supreme Court of Appeal held in *Unibank Savings and Loans Ltd (formerly Community Bank) v Absa Bank Ltd 2000 (4) SA 191 (SCA)*[6], a debtor's financial difficulties, even if occasioned by circumstances beyond his or her control, do not constitute a defence to a claim for payment.

[37] Moreover, the respondent's explanation is, with respect, somewhat lacking in credibility. The agreement was concluded in October 2023. The respondent was required to make payments from January 2024. The statement of account reveals that the respondent made sporadic payments during 2024, suggesting that he was able to generate some income during that period. He did not approach the applicant to seek a restructure of the debt or payment relief. He simply stopped paying.

[38] Even if the suspension of the permit were accepted as a full explanation for the default, it does not provide a defence to the claim. It may explain why the arrears arose, but it does not entitle the respondent to resist cancellation and repossession

[6] Unibank Savings and Loans Ltd (formerly Community Bank) v Absa Bank Ltd 2000 (4) SA 191 (SCA) at para 9.3.1.

The Allegations in the Supplementary Affidavit:

[39] The supplementary affidavit filed on 04 February 2026 raises new and serious allegations. The respondent alleges that the applicant opened a false fraud case against him, which caused him to lose investor support and damaged his reputation within the taxi industry. The respondent further alleges that the investigating officer verified his membership of the taxi association and that the prosecutor withdrew the case. The respondent further alleges that he sold his late grandparents' property to raise funds, but that delays in the winding up of the estate have prevented the release of the funds. The respondent also claims to be a registered debt collector, security officer, and professional driver, and that the false fraud case threatened his ability to earn a living.

[40] These allegations, if true, are deeply concerning. They suggest conduct on the part of the applicant that, if established, could amount to an abuse of process. They raise serious questions about the applicant's conduct and its treatment of the respondent. However, the critical question for present purposes is whether these allegations constitute a defence to the applicant's claim.

[41] The claim before this court is for cancellation of the agreement and return of the vehicle based on the respondent's breach. The respondent's allegations do not address the breach. They do not assert that the applicant breached the agreement. They do not assert that the agreement is invalid. They do not assert that the respondent is not in arrears. The allegations relate to events that occurred after the breach and, in some cases, after the institution of proceedings.

[42] Even if the fraud case were opened without justification, that would not extinguish the respondent's obligation to pay the instalments. Even if the respondent lost investor support as a result, that does not excuse his failure to

pay. Even if the respondent suffered reputational harm, that does not constitute a defence to the claim.

[43] The respondent has not sought to amend his plea to raise these allegations as a defence. They are raised in a supplementary affidavit filed in opposition to summary judgment. The purpose of summary judgment proceedings is not to determine counterclaims or allegations of improper conduct. It is to determine whether the defendant has a defence to the claim.

[44] In *District Bank Ltd v Hoosain and Others* 1984 (4) SA 544 (C)[7], the court held:

> "A defendant faced with a claim for summary judgment must appreciate that, while the Court is not called upon to adjudicate disputed issues of fact in order to enable it to decide whether the defendant has a good and bona fide defence to the claim, the Court must be appraised of the facts upon which defendant relies with such completeness as to be able to hold that, if these statements of fact are found at the trial to be correct, judgment should be for the defendant."

[45] The respondent's allegations, even if proved, would not result in judgment for him. At best, they might support a claim for damages or some other remedy, but they do not defeat the applicant's claim. They are, therefore, not a defence.

[46] I am mindful of the serious nature of the respondent's allegations. If the applicant has indeed laid false criminal charges against the respondent, that conduct is deserving of the strongest censure. It is conduct that this court cannot and will not condone. However, the appropriate forum for that censure is not this application for summary judgment. The respondent may pursue his remedies in separate proceedings, but those matters are not before me, and they do not constitute a defence to the applicant's claim.

[7] District Bank Ltd v Hoosain and Others 1984 (4) SA 544 (C) at 547H-548A.

Evaluation: Bona Fides and Triable Issues:

[47] Having examined each of the respondent's alleged defences, I am compelled to conclude that none of them meets the requirements set out in *Maharaj* and *Breitenbach*. The respondent has not disclosed a *bona fide* defence. He has not raised any triable issue.

[48] The respondent's answering affidavit is, in large measure, a repetition of his plea. It contains bald denials, vague undertakings, and conclusory allegations. It does not engage meaningfully with the applicant's claim. It does not set out facts which, if proved at trial, would constitute a defence.

[49] The supplementary affidavit, while raising serious allegations, does not alter this conclusion. The allegations do not constitute a defence. They may support a counterclaim, but they do not defeat the claim.

[50] In *Tshwane City v Blair Atholl Homeowners Association 2019 (3) SA 398 (SCA)*[8]*,* the Supreme Court of Appeal reiterated that summary judgment may be granted if the defendant fails to set out a defence that is both bona fide and good in law. The respondent has failed to do so.

[51] The applicant has established a clear and unanswerable claim. The respondent is in breach of the agreement. The arrears are substantial. The applicant has complied with its obligations under the NCA. The respondent has no defence.

[52] The application for summary judgment must, accordingly, succeed.

Costs:

[8] Tshwane City v Blair Atholl Homeowners Association 2019 (3) SA 398 (SCA) at para 32.

[53] The applicant seeks costs on the attorney and client scale. It relies on two grounds: first, that the respondent has raised frivolous points that lack merit, putting the applicant to unnecessary expense; and second, that the agreement provides for attorney and client costs in the event of litigation.

[54] Clause 11.2 of the agreement provides that all attorney's costs will be recovered from the respondent on the attorney and client scale if the matter is defended. Clause 6.8.5 of the particulars of claim similarly records that the agreement entitles the applicant to recover costs on an attorney and client scale.

[55] In *Nel v Waterberg Landbouers Ko-operatiewe Vereeniging 1946 AD 597*[9], the court held that attorney and client costs may be awarded where special considerations arise from the circumstances giving rise to the action or from the conduct of the losing party, to ensure that the successful party is not out of pocket in respect of the expense caused by the litigation.

[56] In *Re Alluvial Creek Ltd 1929 CPD 532*[10], the court added that such an order may be granted without any reflection upon the party where the proceedings are vexatious, in the sense that they put the other side to unnecessary trouble and expense which the other ought not to bear.

[57] The respondent has defended this action on grounds that are without merit. His plea and answering affidavit contain bald denials and vague undertakings. He has not, at any stage, made a genuine attempt to settle the arrears or to engage constructively with the applicant. The supplementary affidavit, while raising serious allegations, does not detract from the fact that the respondent is in breach and has no defence to the claim. The applicant has been put to unnecessary expense in pursuing this application.

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[9] Nel v Waterberg Landbouers Ko-operatiewe Vereeniging 1946 AD 597 at 607.
[10] Re Alluvial Creek Ltd 1929 CPD 532 at 535.

[58] In the circumstances, and in accordance with the terms of the agreement, I am satisfied that a costs order on the attorney and client scale is appropriate.

Order:

[59] In the circumstances, the following order is made:

1. The application for summary judgment is granted.

2. The instalment agreement concluded between the applicant and the respondent on about 24 November 2023, bearing agreement number: 125154:132643 is hereby cancelled.

3. The respondent is ordered and directed to return the motor vehicle being a 2023 Toyota Quantum/Hiace 2.5 D-4D Sesfikile 16s with engine number: 2[…] and chassis number: A[…] *("motor vehicle")* to the applicant forthwith.

4. The applicant's claim for payment contained in paragraph 10 of its particulars of claim is posted, pending the return of the motor vehicle to the applicant and the subsequent determination of the value, the calculation of the amounts due to the applicant and judgment for the amount, together with interest and costs.

5. The applicant shall retain all monies paid by the respondent to the applicant.

6. The respondent is ordered to pay the costs of this application on the scale as between the attorney and client scale, including costs counsel, such costs to be taxed on scale C.

KHABA AJ

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

Appearances:

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Date of Hearing:	12 February 2026
Date of Judgment:	19 March 2026